

WILBUR G. HALLAUER ET AL.

IBLA 81-57

Decided January 26, 1981

Appeal from decision of the Oregon State Office, Bureau of Land Management, denying a request for extension of time to submit additional information and rejecting mineral patent application OR 14769 (Wash).

Affirmed as modified.

1. Applications and Entries: Generally--Mining Claims: Patent

Where an applicant for a mineral patent has been requested to provide additional information and has not done so after 18 months, the Bureau of Land Management may properly deny his request for a further extension of time to submit that information and reject his mineral patent application without prejudice to applicant's right to file a proper application in the future. But when the pendency of an appeal from that decision has stayed its effectiveness beyond the time needed by the applicants to obtain the necessary information, the Board may give the applicants 10 additional days to file the information with BLM before the rejection of their application becomes effective.

APPEARANCES: James R. Thomas, Esq., and Donald C. Bell, Esq., Okanogan, Washington, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Wilbur G. Hallauer, Ralph Hallauer, and Arthur Hallauer have appealed from the September 5, 1980, decision of the Oregon State Office, Bureau of Land Management (BLM), which denied their request for further extension of time in which to submit additional information in connection with a mineral patent application which was also rejected by that decision. OR 14769 (Wash).

The history of this application is one of repeated delays for which appellants are not solely responsible. Appellants filed an application for patent of six mining claims and a millsite on August 27, 1975, but BLM did not issue a letter noting certain deficiencies in the application until January 5, 1977. The necessary information, however, was not promptly submitted by appellants, and on April 6, 1978, BLM issued a decision giving them 30 days in which to submit that information or their application would be rejected. An additional extension of time was necessary, but appellants did submit the requested information. On November 27, 1978, appellants withdrew four of the mining claims from their application, leaving the Moly Boy and Moly Girl lode claims and the Moly Boy millsite claim subject to the application.

In March 1979 appellants inquired about the status of their application. By letter dated April 11, 1979, BLM responded that that title to the claims would be reviewed and, if found adequate, the next step would be to order publication. This letter further requested information showing (1) the actual or estimated mining, processing, and other costs; (2) the value or price of product; and (3) estimated profitability. By letter dated June 20, 1979, appellants indicated that this information would be received by BLM in November 1979. In October appellant indicated that the information could not be supplied until March 1980. At the end of February appellants anticipated sending the information before June 30, 1980. BLM responded that it would expect the requested information by that date. In June appellants wrote that the information would be sent before August 30. On August 25, 1980, appellants requested an extension until December 31. After setting forth these facts in its decision of September 5, 1980, BLM concluded as follows:

In view of the history of repeated delays we have no more reason to believe that granting the requested extension would be productive. The request for extension is therefore denied, and the application is rejected for failure to prosecute it diligently. (43 CFR 3862.6-1) 1 This action is without prejudice to filing an entirely new patent application containing all required showings.

1/ This regulation provides as follows:

"The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application."

With their statement of reasons on appeal, appellants have submitted an affidavit by the consulting geologist on this mineral patent application. The affidavit recites the work done on the claims and indicates that a second phase of drilling had begun in September and has been in progress. The geologist stated that the reason for the requested delays is a discovery of a new block of potential ore which has modified the economic potential of the property to a considerable extent. Appellant contends that its delays in providing the needed information were justifiable. Referring to the regulations cited by BLM in denying the request for an extension, 43 CFR 3862.6-1, appellants assert that the delay has not been unreasonable in light of the circumstances in this case.

[1] BLM may properly require applicants for mineral patents to submit the information requested in its letter of April 11, 1979. See Adams v. United States, 318 F.2d 861 (9th Cir. 1963). If an applicant does not submit the necessary information within a reasonable time, BLM may deny an applicant's request for further extensions and reject the patent application without prejudice to an applicant's ability to file an application in the future when the applicant obtains the necessary information. See 43 CFR 3862.6-1; Walter Bartol, 19 IBLA 82 (1975).

Appellant challenges BLM's conclusion that it has been afforded a "reasonable time" to file the necessary proofs, within the context of 43 CFR 3862.6-1. The filing of a patent application constitutes an assertion by the applicant that it has complied with the statute and regulations, and signals that it is prepared to submit its proof that it has met the requirements and is entitled to the benefit which the statute provides. If, as here, the applicant is still not prepared to submit the necessary proofs 5 years after filing its application and 18 months after BLM's initial request for the data, we must conclude that it has been afforded a "reasonable time" to do so, and that the application was filed prematurely.

It appears that BLM's action in this case was largely a matter of administrative convenience. An administrative directive issued for fiscal year 1981 provides that where an applicant does not take an action to complete a patent application for a year or more, the applicant will be notified to take corrective action and that failure to do so will result in the rejection of the application. Appellants had already been notified on April 11, 1979, of the need to provide additional information. They have not yet done so. Nevertheless, we believe that administrative convenience would now preclude outright affirmance of BLM's decision without modification. By filing this appeal, appellants in effect have gained an extension that they sought from BLM, because the effect of BLM's decision has been suspended during this time. 43 CFR 4.21(a). If we take at face value their request for an extension which was denied by BLM, appellants should have compiled the necessary information by the time our decision on appeal is rendered.

The consulting geologist's affidavit makes clear that appellants' drilling program has continued during this period. If the information is in fact available now, the desired goal of administrative efficiency would not be served by making appellants file it in connection with a new application. On the other hand, appellants' inability to submit the information at the present time would belie their claim they are prosecuting their application with sufficient diligence and would demonstrate the correctness of the BLM's decision of September 5. Accordingly, appellants will be given 10 days after receipt of this decision to submit the required information to BLM; if they fail to submit the information within the time required, the decision rejecting their application will become effective and final.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified and the case remanded for further action consistent with this opinion.

Anne Poindexter Lewis

Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Gail M. Frazier
Administrative Judge

IBLA 81-57 :

52 IBLA 202

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Mineral Patent Application

Order Clarifying Decision

ORDER

In Wilbur G. Hallauer, 52 IBLA 202 (1981), we affirmed a decision of the Oregon State Office, Bureau of Land Management (BLM), which denied appellant an extension of time in which to file information in connection with a mineral patent application and rejected that application. But since the appeal had been pending for a period longer than that which appellants needed to file the necessary information, we modified BLM's decision to permit appellant 10 days in which to submit the information needed to complete the application. If appellants failed to do this, the decision would become effective and final. The case was remanded to BLM for further action consistent with our opinion.

On February 12, appellant notified the Board that it had timely filed the required information with BLM and asked that we vacate BLM's earlier decision rejecting the application. As the case is now before the Bureau, we need only note that it was implicit in our decision upon timely submission of the information and adjudicate the application on the merits in light of that information.

Therefore, pursuant to the authority delgated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, our decision is clarified as provided herein.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Adminstrative Judge

Gail M. Frazier
Administrative Judge

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